

Draft Minutes
DELTA PROTECTION COMMISSION
Thursday, May 28, 1998

1. Call to Order/Attendance. The meeting was called to order at 6:30 p.m. at the Jean Harvie Community Center. Commissioners in attendance were: Chairman McCarty, Vice Chair Mello, Commissioners Brean (6:45), Broddrick, Cabaldon, Calone, Canciamilla, Ferreira, McGowan, Nottoli (6:50), Potter and Yates. Commissioners absent were: Commissioners Barber, Curry, Harris, Rhodes, Salmon, Sanders, and Thomson.
2. Public Comments. There were no public comments.
3. Minutes of the March 26, 1998 Meeting. Regarding the Akins case, Vice Chair Mello asked if the Attorney General had researched the term "historical flooding"; Dan Siegel said he would research that issue. The minutes were approved as submitted on a motion by Commission Broddrick and a second by Commissioner Calone.
4. Chairman's Report. Chairman McCarty reported the next meeting will be held on Thursday July 23, 1998. Chairman McCarty said the agenda will be revised to address the CALFED environmental document comment letter first, then move on to the waiver issue. There were no objections.
5. Attorney General's Report. There was no report.
6. Executive Director's Report. Margit Aramburu distributed a written copy of her report. She reported that Lori Clamurro had prepared an update of pending State legislation and noted that SB 1075 has moved out of the Assembly Appropriations Committee to the Assembly floor; Ms Clamurro has prepared a memo regarding the Grasslands Bypass project and circulated an update memo at the meeting; Commission received announcement of Agricultural Waterfowl Incentive Program; Commission received summary of San Joaquin County Habitat Conservation Plan; Commission received a new CALFED summary document; Commission received revised schedule for CALFED environmental document--comment period extended to July 1; announcement of CALFED Ecosystem Restoration Project Grants application period, applications due July 2; Department of Parks and Recreation has decided to divide one million dollars in Prop 204 funds for public access and recreation between East Bay Regional Park District and Nature Conservancy; US Fish and Wildlife Service has reopened comment period on Sacramento Splittail; Ducks Unlimited has released three more technical reports (Chinook Salmon, Mallard, and Disturbance of Waterfowl Habitat Quality); Department of Conservation has announced availability of funds for acquisition of agricultural land conservation easements; reviewed meetings attended by staff; and reported on Commissioner Salmon's inquiry re Interim South Delta Project's possible impacts to Victoria Island.

7. Pending Projects Memo. There were no questions or comments.

11. Consideration of Comments on the CALFED Programmatic Draft Environmental Impact Report (DEIR).

Ms Aramburu reviewed the staff reports. She noted that the CALFED Subcommittee had met, discussed issues to be addressed in the comment letter, and given directions to staff.

Commissioner Cabaldon asked if Ms Clamurro's memo summarizes CALFED's analysis or staff analysis; Ms Aramburu said the memo describes CALFED's analysis.

Ms Aramburu said the focus of the draft letter is to recognize the difficult task assigned to CALFED, but to note the possible impacts to agriculture, wildlife habitat, and recreation lands uses in the Delta and supports the proposed levee program. The comments are general and supportive in nature, to help CALFED develop a better product.

Vice Chair Mello asked that on page 6, the letter should include loss of sales tax revenues.

Chairman McCarty asked for public comments; there were none.

On a motion by Commissioner Nottoli and a second by Commissioner Ferreria, the draft letter was approved by a roll call vote of 9 ayes (Brean, Cabaldon, Calone, Canciamilla, Ferreira, McCarty, McGowan, Mello, Nottoli); no noes; and 3 abstentions (Broddrick, Potter, and Yates).

Commissioner Potter said that Tom Zuckerman is working on a plan for ecosystem restoration that will minimize agricultural land conversion and asked that staff work with him. He also said he would leave some information from CALFED staff regarding ag land conversion. Ms Aramburu said there have already been positive changes in the ERPP as reflected in the DEIR, such as working on enhancement of publicly owned land as a high priority. She has been working with Tom Zuckerman and other Delta interests on the agricultural land conversion issue.

Chairman McCarty directed staff to continue working with the Zuckerman group.

10. Consideration of Waiver Recognizing Attorney General Representation of Both the Delta Protection Commission and CALFED.

Dan Siegel reviewed the issues raised at the last meeting. In this type of situation, the Attorney General's office asks that both clients sign a waiver. The waiver prepared for the Commission does not extend to litigation or judicial representation. He reviewed the responses to the questions raised. He said there are three options: first, sign the waiver knowing that the Attorney General's office will set up an ethical wall within the office between those representing CALFED and those representing the Commission; second, not sign the waiver and have the Attorney General represent the Commission on all matters but NOT regarding CALFED; and

third, not sign the waiver and retain outside counsel regarding CALFED, with the understanding that the Attorney General would have to approve that action; the Commission would have to pay for outside counsel.

Rick Frank said the purpose of seeking the waiver is to allow the Attorney General's office to provide full representation for the Commission.

Commissioner McGowan said he had talked to Mr. Frank, and asked if the Commission grants the waiver, how would the ethical wall be maintained in light of any possible litigation; Mr. Frank said this is an accepted way to address representation of multiple clients. He said certain attorneys in the office would represent the Commission, and others would be assigned to represent CALFED and ensure that there is no sharing of information between those two groups.

Commissioner Potter asked if the memo includes reference to the ethical wall; Mr. Siegel said no, but it could be addressed in a separate memo to the Commission.

Mr. Frank added that the waiver is revokable at any time by the Commission. Mr. Siegel said the ethical wall is to provide comfort to the client. He said the ethical wall could actually preclude the need for a waiver, however the Attorney General's office is offering both.

Commissioner Cabaldon asked if all other State agencies involved with CALFED have signed a waiver; Mr. Siegel said the CALFED program has executed the waiver because the Attorney General's office is representing the program, not the agencies that participate in the program. Commissioner Cabaldon asked if the Attorney General's office also represents those agencies; Mr. Frank said yes, but the need for a waiver is through the CALFED program. If litigation seems imminent, there would be a need for a waiver.

Commissioner Yates asked if the waiver addresses litigation; Mr. Siegel said the waiver only applies to advocacy actions, not litigation. If litigation is imminent, the issue would be reconsidered.

Commissioner McGowan commented that the issue of accepting the waiver seems to come down to the strength of the ethical wall within the Attorney General's office; Mr. Frank said the Attorney General's office is very uncomfortable with the idea of representing two agencies suing each other. Some times they decline to represent either client. Commissioner McGowan said he wanted assurance that the Commission's counsel is poised and ready to represent the Commission; Mr. Frank said yes the Attorney General is ready to fully represent the Commission, and acceptance of the waiver would allow them to provide that level of service.

Vice Chair Mello said he is satisfied since the waiver can be revoked at any time.

Commissioner Cabaldon agreed, with inclusion of additional language regarding the ethical wall.

Commissioner Potter agreed.

Commissioner Nottoli said he had reviewed the responses from the Attorney General and is satisfied with Option One.

On a motion by Commissioner McGowan, and a second by Commissioner Calone, the Commission voted unanimously to direct the Chair to sign the waiver with inclusion of a description of the ethical wall.

8. Vote on Submittal from Sacramento County Regarding Conformance with Amendment to the Land Use and Resource Management Plan for the Primary Zone of the Delta.

Chairman McCarty said the Commission will vote on the County's proposed General Plan amendment to include Utilities and Infrastructure Policy P-3 in the Commission's Plan that has been adopted into the County's General Plan as a policy document. A public hearing was held at the March 26, 1998 meeting.

Vice Chair Mello asked what the one written comment said; Ms Aramburu said the one written comment was from the County regarding clarification of possible impacts to existing sewage treatment facilities in the Delta communities. She said she had responded that the policy applies to NEW facilities, and would not preclude the County from ensuring that existing sewage treatment facilities are adequate to protect public health and safety of the residents of the Primary Zone.

Chairman McCarty opened the public hearing, there were no public comments.

On a motion by Commissioner Nottoli and a second by Commissioner Cabaldon, the Commission approved the motion unanimously by roll call vote.

9. Briefing on Submittal of Solano County Regarding Conformance with Amendment to the Land Use and Resource Management Plan for the Primary Zone of the Delta.

Chairman McCarty stated the Commission will review the submittal of Solano County which indicates that the County is in full conformance with the amendment Plan and no further action is needed by Solano County or the Commission.

Ms Aramburu noted that Solano County had adopted an ordinance which controls placement of sludge, and after the Commission's policy was adopted, the County amended that code to preclude placement of sludge in the Primary Zone. Staff reviewed the County submittal with counsel and determined that no further action is needed. If the Commission concurs, no further action is needed and staff will write a letter to the County informing them of the Commission's concurrence.

There were no questions or comments; Chairman McCarty directed staff to write to Solano County.

12. Consideration of FY 98-99 Budget and Work Plan.

Chairman McCarty said the Commission will hold a public hearing and vote on a budget and work plan through January 1, 1999, the Commission's sunset date. As part of this agenda item, the Commission will address disposition of any residual funds from FY 97-98 and extension of the current contract with Teale Data Center for GIS/mapping services; no other contracts are proposed.

Ms Aramburu said this is a half year budget and work plan until the current sunset date. She said the item includes disposition of any residual funds toward repayment of the Commission's original ELPF loan, and asked that the Commission extend the Teale contract until January 1, 1999.

Commissioner Cabaldon said it looks as if the Commission's time extension will be approved before the budget is approved, and asked what plans are in place to address additional funding needed for the second half of FY 98-99; Ms Aramburu said she has left that to Senator Johnston's staff and Department of Finance. He asked if the Commission would return more to the ELPF fund than was originally borrowed; Ms Aramburu said it is unclear if all the agencies would agree, however, the Commission has not actually paid back the total funds.

Commissioner Ferreira asked if all the funds had been paid against the loan; Ms Aramburu said no, some were simply "unexpended" and could not be returned.

Chairman McCarty noted that the Commission has been trying to pay down the original loan through every possible effort.

Commissioner Potter commented that Senator Johnston has requested that the CALFED program in the Delta be more aggressively coordinated with the Delta Protection Commission. He said he would like to see additional items in the work plan to reflect that direction. He suggested adding items such as: identifying and mapping agricultural lands threatened by the CALFED program, and mapping and identifying lands the CALFED program is proposing to restore to wildlife habitat. He said it would be positive for the Commission to show Senator Johnston that the Commission will respond to his comments.

Chairman McCarty added that Senator Johnston sees an expanded role for the Commission in addressing land use conflicts that will arise as CALFED begins to implement their plans. He said he can see hearings on appeals, where landowners come to seek relief. He said that will take a different level of activity from the Commission and from staff. He said part of the work plan should be staffing levels and skills that will be needed.

Commissioner Broddrick said it appears the Commission may play a bigger role in the issue of land conversion. He said the Commission is also charged with issues associated with wildlife and with recreation. He said it will be important that if the Commission is going to get involved with facilitating and ensuing there is a balance between the key land uses, the Commission will have to look at its future role, and have budget authority to expend funds to carry out that role. He said the Commission needs to establish some examples, with local participation, of projects where wildlife habitat issues, flood control issues, levee stability issues, and protection of agriculture are synergistic versus diametrically opposed. He said the Commission has tried to balance and make provisions for that in the Resource Management Plan. Now, the Commission needs to establish some examples to show CALFED and the Delta community and through out California, that the Delta Protection Commission can play a role in carrying out the goals of the program. He alluded to the Tyler Island conservation easement, and noted that CALFED should accept that challenge. He said central to any solution is resolution of Section 10 endangered species issues in the Delta. Without that, there will not be the needed assurances to carry out a program. He suggested that when the bill passes, the Commission needs to anticipate fiscal needs and potentially ask for CALFED funds through the grant process to hire the staff, do the consulting services, do the collaboration, the public outreach and meetings as necessary to make sure the Commission can build a process from the ground up. He said part of the problem is that CALFED's planning is currently at the programmatic level; the details will be the key and they have not yet been developed. He suggested the Commission be proactive, not reactionary.

Chairman McCarty opened the public hearing; there were no public comments.

On a motion by Commissioner Cabaldon, and a second by Commissioner Calone, the work plan, budget, repayment of funds to the ELPF loan and extension of the Teale contract were approved unanimously by voice vote. As part of the motion, Commissioner Cabaldon asked that the work plan be amended to add focus on CALFED elements, and with the understanding that the Commission will review the budget and work plan if the sunset is extended.

13. Commissioner Comments/Announcements.

Chairman McCarty announced he had talked to the Mayor of Stockton regarding Utilities and Infrastructure Policy P-3 and possibly using cannery wastes that have not been through the sewage treatment plant to irrigate Delta agricultural lands. He said he suggested that would not be consistent with the Plan and goals of the Act.

14. Adjournment. The meeting was adjourned at 8:50 p.m.